



[1] *1677*

TO THE
HONORABLE
Societies of Grayer-Inne, and of
the rest of the Innes of Court,
and to all the Professors of the
LAW.

1677

I Have now spent Forty five yeares in the Study of the Lawes
of this Land being my profession, under and by the conduct of
which Lawes this common-wealth hath flourished for some ages
past in great splendor and happinesse (jam seges est ubi Troja fuit)
The great & full body of this Kingdom hath of late yeares fallen
into an extreame sicknesse it is truly said that the cause of the
disease being knowne, the disease is easily cured. There is none
of you I hope, but doth heartily wish the recovery of our com-
mon parent, our native country (Moribus antiquis stat res
Britannica) I call God to Witnes that this discourse of mine hath
no other end then my wishes of the common good: how farr I have
been from Ambition, my life past, and your owne knowledge of
me, can abundantly informe you, and many of you well know,
that I ever detested the ship-mony and monopolies, & that in the
beginning of this Parliament, for opposing the excesses of one of
the Bishopes, I lay under three Excommunications and the Ex-
amination of seeventy seven Articles in the high Commission
Court. His sacred Majesty: (God is my Witnes) made mee
a judge in the parts of Wales against my will, and all the meanes
I was able to make; and a patent for my place was sent mee
A for

for the which I have not paid one farthing, and the place is of so in-considerable a benefit that it is worth but 80.l. per Annum when paid, and it cost me every yeare I served twice as much out of mine owne estate in the way of an ordinary and frugall expence. That which gave me comfort was that I knew well that his Majesty was a just and a prudent Prince.

In the time of the Attournyships of Master Noy and the Lord Banks, they were pleased to make often use of me, and many references concerning suits at Court upon that occasion came to my knowledge, and as I shall answer to God upon my last account this is truth, that all or most of the. references which I have seen in that kind (and I have seen many) were to this effect, That his Majesty would be informed by his Counsell if the suits preferred were agreeable to the Lawes, and not inconvenient to his people, before he would pass them. [What could a just and pious Prince do more?] Gentlemen: you shall find the Cause and the Curse of the present great distemper in this discourse, and God Prosper it in your hands, thoughts, and words, as the Case deserves.

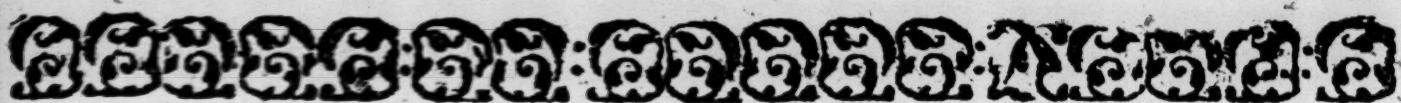
Hold to the Lawes, this great body recovers: forsake them, it will certainly perish. I have resolved to tender my selfe a Sacrifice for them as cheerefully, and I hope (by Gods assistance) as constantly as old Eleazer did for the holy Lawes of his Nation.

Your well-wisher.

DAVID JENKINS.

Now Prisoner in the Tower.

L E X



LEX TERRÆ.

THE Law of this Land hath three grounds. First *Custom*. Secondly *Indiciall Records*. Thirdly *Acts of Parliament*. The two latter are but declarations of the *Common-Law* and *Custom* of the Realme, touching *Royall Government*. And this Law of *Royall-Government*, is a *Law-Fundamentall*.

The Government of this Kingdome by a *Royall Sovereign*, hath beene as ancient as history is, or the memoriall of any time; what power this *Sovereignty* alwayes had and used in warre and peace in this land, is the scope of this discourse; That *Vsage* so practised makes therein a *Fundamentall Law*, and the *Common-Law* of the Land is common *Vsage*, *Plowdens Commentaries*. 175.

The kings prerogative is a principall part of the common Law. *Com: Littl.* 344:

For the first of our Kings sithence the Norman conquest, the first *William*, second *William*, *Henry* the first, *Stephen*, *Henry* the second and *Richard* the first, the Customs of the Realme touching *Royall Government*, were never questioned: The said Kings injoyed them in a full measure. In *King Johns* time the Nobles and Commons of the Realme conceiving that the ancient customes and Rights were violated, and thereupon pressing the said King to allow them in the seventeenth of *King John* the said Liberties were by *King John* allowed, and by his son *Hen.* the third, after in the ninth yeere of his Reigne confirmed, and are called *Magna Charta*, and *Charta de Foresta* declared foure hundred twenty two yeeres sithence by the said Charters.

Now rests to be considered, after the Subjects had obtained their Rights and Liberties, which were no other then their ancient Customes (and the fundamentall Rights of the King as *Sovereigne* are no other.) How the Rights of *Sovereignty* continued in practise from *Henry* the thirds time untill this present Parliament of the third of November 1640. for before *Henry* the thirds time, the *Sovereignty* had a very full Power.

Rex habet Potestatem & jurisdictionem super omnes qui in Regno suo sunt, ea que sunt jurisdictionis & Pacis ad nullum

Bracton *temp. H.* *3. lib. 4. cap. 24. Sect 1* *pertinent nisi ad Regiam dignitatem, habet etiam coercionem, ut Delinquentes puniat & coerceat;* This proves where the supream Power is.

A Delinquent is hee who adheres to the Kings Enemies *Com Sur. Littl. 261.* This shewes who are Delinquents.

Sect 5 *Bract. ibid.* *Omnis sub Rege, & ipse sub nullo nisi tantum Deo, non est inferior sibi Subjectis, non parem habet in Regno suo.* This shewes where the supream power is.

Bracton *lib. 5. tract 16.* *Rex non habet superiorem nisi Deum, satis habet ad poenam quod Deum expectat ultorem.* This shewes where the supream power is.

3. de de *salut. Cap.* Treasons, Fellonies, and other Pleas of the Crowne, are *propria causa Regis.* This shewes the same power.

3. Bracton. Lib 3. Cap. 7. By these passages it doth appeare what the Custome was for the power of *Soveraignty* before that time; the power of the Militia, of coyning of Money, of making Leagues with forreigne Princes, the power of Pardoning, of making of Officers, &c. All Kings had them, the said Powers have no beginning.

6. Ed. 1. *Sexto Ed. 1. Com sur. Littl. 85.* Liege Homage, every Subject owes to the King (*viz*) Faith *de Membro, de vita, de terreno Honore*, the forme of the Oath *inter vetera statuta* is set down; We read of no such, or any Homage made to the two Houses but frequently of such made by them.

It is declared by the Prelates, Earles, Barrons, and Commonalty of the Realm, that it belongeth to the King and his Royall Segniory, straitly to defend force of Armour, and all other force against the Kings peace, at all times when it shall please him, and to punish them that shall doe contrary according to the Law and Usage of the Realme, and hereunto they are bound to ayde their Soveraigne Lord, at all seasons when need shall be. Here the supream power in the time of Parliament, by both Houses is declared to belong to the King.

7 Ed. 2. 4. pars instit. 14. At the beginning of every Parliament, all Armes are, or ought to be forbidden to be born in London, Westminster, or the Suburbs. This condemnes the multitudes comming to Westminster, and the Guards of armed men.

1 Ed. 2. de Militibus. All who held by Knights-service, and had twenty pounds *per annum*, were distraynable *ad Arma militaria suscipienda.* This agrees

grees with the Records of ancient time, continued constantly in all Kings times, but at this Parliament 3. November 1640. The King, out of his grace, discharged this duty, which proves that the power of warre and preparation thereto, belongs not to the two houses, but only to the King.

The two *Spencers* in *Ed. 2.* time hatched (to cover their Treason) this damnable and damned opinion (*viz.*) That Ligeance was more by reason of the Kings politique capacity then of his person, upon which they inferred these execrable and detestable consequences. First, if the King demeaned not himselfe by reason in the right of his Crown, his Lieges are bound by Oath to remove him. Secondly, seeing the King could not be removed by suit of Law it was to be done by force. Thirdly, that his Lieges be bound to govern in default of him.

All which tenets were condemned by two Parliaments, the one called *exilium Hugonis* in *Ed. 2.* time; the other by 1. *Ed. 3.* cap. 2. All which Articles against the *Spencers* are confirmed by this last Statute, the Articles are extant in the booke called *vetera Statuta*. The separation of the Kings person from his power, is the principall Article condemned, and yet all these three damnable, detestable, and execrable consequents, are the grounds whereupon this present time relies, and the principles whereupon the two Houses found their Cause.

The Villeine of a Lord, in the presence of the King, cannot be seized for the presence of the King is a protection for that time to him: This shewes what reverence the Law gives to the person of a King.

Reges, sacro oleo uncti sunt capaces spiritnalis jurisdictionis But the two Houses were never held capable of that power.

Rex est persona mixta cum sacerdote, habet Ecclesiasticam & spiritualem jurisdictionem. This shewes the Kings power in Ecclesiasticall Causes.

The lands of the King is caled in Law *Patrimonium sacrum*. The houses should not have meddled with that sacred Patrimony.

The King hath no Peere in his land, and cannot be judged? go the two Houses are not above him.

The Parliament 19. *Ed. 3* was repealed, for that it was against the Kings Lawes and prerogative. 4 *par. instit. fol. 52.* this shewes cleerly

*Ed. 3.
Calvins
Case Cooke
1.7. fol. 1*

*Plowden
com. 322.
27. ass. pl.
49.*

*33 Ed. 3:
ayde de roy
103 Fitz.
10 H. 7
16.*

*Com. Sur
Litt. Sect
4. J
3. Ed. 3.
19.*

cleerely the propositions sent to Newcastle, ought not to have been presented to his Majesty, for that they are contrary to the Lawes and his Prerogative.

4 pars
Cooks in-
stit. fol. 14
42. E. 3.
Parlia-
ment Rol.
num. 7.
Lex &
consuetudo
Parlia-
menti.

The Lords and Commons cannot assent in Parliament to any thing that tends to the disinherision of the King and his Crowne, to which they are sworn. This condemnes the said Propositions likewise.

25. Ed. 3.
cap. 2.

To depose the King, to imprison him untill he assent to certaine demands, A war to alter the Religion established by Law, or any other Law, or to remove Councillors, to hold a Castle or Fort against the King; are offences against that Law declared to be treason by the resolutions herein after mentioned, by that Law men are bound to ayd the King when war is levied against him in his Realme. King, in this Statute must be intended in his naturall body and person that only can die; for to compass his death, and declare it by overt Act is declared thereby treason, to incounter in fight such as come to ayd the King in his wars, is treason.

21. Ed.
4. 14.

Compassing of the Queenes death, of the Kings eldest son, to coyne his money, to counterfeit his Great-Seale, to levie Warre against him, to adhere to such as shall so do, are declared by that Act to be high Treason. This Statute cannot refer to the King in his politique capacity, but to his naturall, which is inseperable from the politique, for a body politique can have neither Wife nor Child, nor levie Warre, nor do any Act but by the operation of the naturall body: A Corporation or body politique hath no soule or life, but is a fiction of the Law, and the Statute meant not fictitious persons, but the body naturall, conjoynd with the publique, which are inseperable.

R. 2. 11.
anno cap.
13.
4 pars in-
stit. fol. 42.

The clause in that Act, that no man should sue for grace or pardon for any offence condemned, or forfeiture given by that Act, was repealed by a subsequent Act in 21. R. 2. holden unreasonable, without example and against the Law and custom of the Parliament. This condemnes the Proposition for disabling the King to Pardon. 4. pars instit. fol. 42. The Act of 11. R. 2. so much urged by the other side, was an Act to the which the King consented, and so a perfect Act: yet Note the Army then about the town: Note that that Law is against private persons, and by the 3. cap. thereof, the Treasons there declared, are declared to be new

Treasons

Treasons made by that Act, and not to be drawne to example, it was abrogated 21. R. 2. and revived by an usurper 1. H. 4. to please the people, and by the tenth chap. thereof enacts that nothing shall be treason but what is declared by 25. Ed. 3. 16. R. 2. cap. 5.

The Regality of the Crown of England is immediatly subject to God and to none other. Plaine words, shewing where the supream power is. H. 4.

The Commission of Array is in force and no other Commission Rot. Parlm. 5. H. 4. numb. 24. an Act not printed, this Act was repealed by 4. and 5. P & M. cap. 2. this repealed by the Act of 1. Jacobi and so it is of force at this day, for the repealing Statute is repealed 4. pars institt. fol. 51. & 125. published since this Parliament, by the desire of the house of Commons, their Order is printed in the last leafe of the commentaries upon Magna Charta.

Sir Edward Cooke, by their party is holden for the Oracle of the Law, who wrote the said fourth part, in a calme and quiet time, and I may say, when there was no need to defend the authority of the Commission of Array.

A booke allowed by Sir Nat. Erent, called the reason of the War: fol. 65.

For that objection, that that Commission leaves power to the Commissioners to tax men *secundum facultates*, and so make all mens estates Arbitrary: the Answer is, that in levying of publick ayds upon mens goods & estates, which are variable, and probably cannot be certainly knowne by any but the owners, it is impossible to avoid discretion in the assessments, for so it ever was, and ever will be. By this appeares that the Votes of the two houses against the commission of Array, were against the Law.

The death of the King dissolves the Parliament, if Kings should refer to the politique capacity it would continue after his death 4. pars Inst. 46. which proves that the King cannot be said to be there when he is absent, as now he is: there is no *interregnum* in the Kingdome the dissolution of the Parliament by his death, shewes that the beginning and end thereof refers to the naturall person of the King, and therefore he may lawfully refuse the Propositions. H. 5.

2. H. 5. 4 pars inst. 46.

2. H. 5. Chap. 6. to the King or ly it belongs to make Leagues with Forraigne Princes? this shewes where the supream power is.

H. 6.

8. H. 6. numb. 57 Rott. Parl. Cookes 4 pers instit 25, No privilege of Parliament is grantable for treason, Felony, or Breach of the Peace; if not to any one member, not to two, not to ten, not to the Major part, 19 H. 6. 62. The Law is the inheritance of the King and his people by which they are ruled, King and people; And the people are by the law bound to ayde the King, and the King hath an inheritance to hould Parliaments and in the ayds granted by the Commonnalty. If the major part of a Parliament commit treason they must not be Judges of it; for no man or body, can be Judge in his owne cause, and aswell as ten or any number may commit treason, the greater number may aswell.

32. H. 6
13. Plowd.
334.

The King by his letters pattents may constitute a County palatine and grant Regall rights, this shewes where the supreme power is.

Ed 4:

17. Ed. 4. rot parl. numb. 39. No privilege of Parliament is grantable for Treason, Fellony, or Breach of the peace, if not for one, not for two or more, or a Major part.

Calvins
Case 7 pers
fol. 11 12

The same persons must not be Judge and party. A corporate body can commit no treason, nor can treason be committed against a corporate body, 21. E. 4, 13. and 14. but the persons of the men who make that body may commit treason, and commit it against the naturall person of him who to some purposes is a body corporate, but *quatenus corporate* no treason can be committed by or against such a body; that body hath no soul, no life, and subsists only by the fiction of the Law, and for that reason the Law doth conclude as aforesaid; therefore the statute of 25. E. 3. must be intended of the Kings naturall person conjoynd with the politique which are inseparable and the Kings naturall person being at Holmby, his politique is there also, and not at Westminster; for the politique and naturall make one body indivisible.

Plow.com.
213.

19. Ed. 4.
46.

22. Ed. 4.
Fitz. ju-
risdiction.
last pla-
cite.

If all the people of England should breake the league made with a forreigne Prince, without the Kings consent, the league holds and is not broken; and therefore the representative body is inferior to his Majesties.

The King may erect a Court of Common-pleas in what part of the kingdome he pleaseth by his letters patents; can the two houses do the like?

1. Ed. 5. fol. 2. It cannot be said that the King doth wrong, **Ed. 5.**
declared by all the Judges and Serjants at Law then there. **4 Ed. 4. 25.**

The reason is, nothing can be done in this Common wealth **5 Ed. 4. 29.**
by the Kings grant or any other act of his, as to the subjects persons, goods, lands or liberties, but must be according to established lawes, which the Judges are sworn to observe and deliver betwene the King and his people impartially to rich and poor, high and low; and therefore the Justices and the Ministers of Justice are to be questioned and punished if the Lawes be violated: And no reflection to be made on the King. All Counsellors and Judges for a yeare and three months untill the tumults began this Parliament were all left to the ordinary course of Justice, what hath beene done since is notorious.

For great Causes and considerations an act of Parliament **R. 3**
was made for the surety of the said Kings person; if a Parliament were so tender of King **Rick. the 3.** the houses have greater reason to care for the preservation of his Majestie. **1 R. 3. cap. 15.**

The Subjects are bound by their allegiance to serve the King **H. 7.**
for the time being against every Rebellion, power and might, **11 H. 7. cap. 1.**
reared against him within this land, that it is against all lawes, reason and good conscience, if the King should happen to be vanquished, that for the said deede and true duty and alligance they should suffer in any thing, it is ordeined they should not: and all acts of proceffe of law hereafter to be made to the contrary are to be void, This law is to be understood of the naturall person of the King, for his politique capacity cannot be vanquished; nor war reared against it.

Relapsers are to have no benefit of this act.

It is no statute, if the King assent not to it, and he may dissent, this proves the negative voice. **12 H. 7. 20.**
H. 8.

The King hath full power in all causes to doe justice to all men this is affirmed of the King, and not of the two Houses. **24 H. 8. cap. 12**
25 H. 8. cap. 21

The commons in Parliament acknowledg no superior to the King under God, the houses of Commons confesse the king to be above the representative body of the Realme.

Of good right and equity the whol & sole power of pardning **27 H. 8. cap. 24**
treasons, felonies &c. belong to the King, as also to make all **Note.**

Justices of Oyer & Terminer, Judges, Justices of the peace, &c. This law condemns the practise of both houses at this time.

33 H.8 cap.21 The kings royall assent to any Act of Parliament signed with his hand expresse in his Letters-patents under the great Seale, and declared to the Lords and Commons shall bee as effectually, as if he assented in his owne person; a vaine act if the King be virtually in the Houses.

Dier 38.H.8 fo 59.60. The King is the head of the Parliament, the Lords the principal members of the body, the Commons the inferior members, and so the body is composed, therefore there is no more Parliament without a king, then there is a body without a head.

14 H.8 fol.3. There is a corporation by the Common-law, as the King, Lords, and Commons, are a corporation in Parliament, & therefore they are no body without the King.

24 Ed.3.48. 1 Ed.4.2. The death of the King dischargeth all mainprise to appeare in any Court, or to keepe the Peace.

2 H.4.8. 1 H.7.10. 1 Ed 5.1. The death of the King discontinues all pleas by the Common-law, which agreeth not with the virtuall power insisted upon now.

Ed 6. 1 Ed.6.cap.7. Writs are discontinued by the death of the King; Patents of Judges, Commission for Justices of the Peace, Sheriffs, Escheators, determined by his death; Where is the virtuall power.

1 Ed.5.cap.2. All authority and jurisdictions spirituall and temporall is derived from the King, therefore none from the Houses.

2.3 Ed 6.ca.2 11 H.7.cap.1. His Majesties subjects, according to their bounden duties, ought to serve the king in his warres, of this side or beyond the Seas; beyond the seas is to be understood for wages: This proves the power of warres, and preparation for war to be in the king.

Calvins Case. 54. pars Cooke 5.6 Ed.cap.11 It is most necessary both for common policy and duty of the subject, to restrain all manner of shamefull slanders against their king, which when they be heard, cannot but be odible to his true and loving subjects, upon whom dependeth the whole unity & universal weale of the realm. This condemns their continuing of the weekly pamphlets, who have been so foule mouthed against his Majesty.

Q. Mary. 1 Mar.PL 2:c.2 The punishment of all offenders against the lawes, belongs to the king, and all jurisdictions doe, and of right ought to belong to the King. This leaves all to his Majesty.

All Commissions to levy men for the warre, are awarded by the king. The power of warre only belongs to the king.

45. P. & M. c. 3
2. Eliz.
10 Eliz. Pl. 315

It belongs to the king to defend his people, and to provide Armes and Force. No speech of the two Houses.

Roy ad sole government deses subjects. Corps naturall le Roy & politique sunt un corps. that is, The king hath the sole government of his Subjects, the body politique and the naturall body of the king make one body and not divers, and are inseparable and indivisible.

Plow. 234. 242
213. Calvins
case 7. pars fol.
12.
Plow. com. 213

The body naturall and politique make one body, and are not to be severed: Ligeance is due to the naturall body, and is due by nature; Gods Law, and Mans law, cannot be forfeited nor renounced by any meanes, it is inseparable from the person.

Plow. 934 243.
213. Calvins
case 7. pars fol.
12.

Every Member of the House of Commons, at every Parliament, takes a corporall Oath. That the King is the Supreme and only Governour in all Causes, in all his Dominions, otherwise he is no Member of that House; the words of the Law are, In all Causes, over all persons.

1 Eliz. cap. 1.
Camdries case.
5. pars fol. 1.

The said Act of 1 Eliz. is but declarative of the ancient Law, *Camdries Case ibid.*

The Earle of Essex, and others, assembled multitudes of men to remove Councillors, adjudged Treason by all the Judges of England.

43 Eliz.
3 pars instit. fo,
c. 2.

To depose the king, or take him by force, to imprison him untill he hath yeelded to certain demands, adjudged Treason, and adjudged accordingly in the Lord *Cobhams Case*.

39. Eliz.
Hil. 1 Jacobi
ibid.

Arising to alter Religion established, or any Lawe, is Treason; so for taking of the Kings Castles, Forts, Ports or Shipping *Brooke treason* 24. 3 & 4. Philip and Mary, *Dier, Staffords Case* concerning Scarborough.

39 Ed. Bradf.
case f. 9. & 16.
By all the
Judges of Eng-
land. ibid.

The Lawe makes not the servant greater then the Master, nor the subject greater then the King, for that were to subvert Order and Measure.

10 Eliz. Plow.
316.

The Law is not knowne but by Usage, and Usage proves the Law, and how Usage hath been is notoriously knowne.

10 Eliz. Plow,
319.

The King is our only Rightfull and lawfull Liege Lord and Sovereigne, We doe upon the knees of our hearts agnize constant Faith, Loyalty and Obedience to the King and his Royall

K. James.
1 Jac. cap. 1.
9 Ed. 4. fol. 8.

progeny, in this high Court of Parliament, where all the body of the Realme is eyther in person or by representation: We doe acknowledge that the true and sincere Religion of the Church, is continued and established by the King. And doe recognize, as we are bound by the Law of God and Man, the Realme of England and the Imperiall Crowne thereof doth belong to him by inherent byrth-right, and lawfull and undoubted succession, and submit our selves and our posterities for ever, untill the last drop of our blood be spent, to his rule; and beseech the king to accept the same as the first fruits of our Loyalty and Faith to his Majesty and his posteritie for ever, and for that this Act is not compleat nor perfect without his Majesties assent, the same is humbly desired. This proves that the Houses are not above the King; that Kings have not their Titles to the Crowne by the two Houses, but by inherent byrth-right, and that there can bee no Statute without his expresse assent, and destroyes the chymera of the Kings virtuall being in the Houses.

3 Jac. cap. 4,

To promise obedience to the Pope, or any other State, Prince or Potentate, other then the King his Heires and Successors, is Treason; and therefore those persons who call the Houses the Estates offend this Lawe:

K. Charles.

Collection of Ordinances fo.

727. 1 pars 16.

fol. 728.

Such Bills as his Majesty is bound in Conscience and Justice to passe, are no Law without his assent.

To designe the ruine of the Kings person, or of Monarchy is a monstrous and injurious charge.

ibid: fol. 865.

Ubi Lex non distinguit, non est distinguendum, all the afore-said Acts and Lawes doe evidently prove the Militia to belong to the king: that the king is not virtually in the two Houses: that the king is not considerable separately in relation to his politique capacity: that the king is not a person trusted with a power, but that it is his inherent byrth-right, from God, Nature and Lawe, and that hee hath not his power from the people: These Lawes have none of those distinctions of naturall and politique, *abstractum & concretum*, power and person, in *Cæsars* time this Island had kings, and ever since, which is almost 17 hundred yeeres agoe.

No King can be named, in any time, made in this kingdom by the people: A parliament never made king, for they were kings before

before, the Parliaments are summoned by the kings Writs, which for Knights Citizens and Burgesles begins thus, viz.

Rex vic. Wilts. Saltem. Quia Nos de avisamento & assensu consilij nri. pro quibus. arduis & urgentib. negotiis nos statum & defensionem Regni nri. Ang. & Eccles. Anglic. concernentibus quoddam Parliamentum nrum, apud B. teneri ordinavimus & ibid cum Prelatis Magnatib. & proceribus dicti Regni nri. Colloqui. habere & tractatum, ipsi Vicecomiti precipimus firmiter injungendo qd. facta Proclamatione in prox. Comitatu tuo post receptionem ejusd. Brevis, duos Milites gladiis cinctos, &c. eligi facias ad faciendum & consentiendum hiis qua tunc ibidem de Communi Concilio nro. Angl faventi Deo contigerit ordinari super Negotiis antedictis, ita quod pro defectu potestatis hujusmodi seu propter improvidam electionem Milium, Civium, & Burgensium pred. dicta negotia nra. infecta non remanerent.

The King is *Principium, caput & finis* Parliamenti, the body makes not the head, nor that which is posterior that which is prior: *concilium non est Preceptum, conciliarij non sunt Preceptores*, for Counsell to compell a consent, hath not bene heard of to this time in any age, and the house of Commons, by the writt, are not called *ad concilium*; the Writts to the twelve Judges, Kings Councell, twelve Masters of the Chancery are *concilium impensuri*, and so of the Peeres. The writts for the Cominalty, *Ad faciendum & consentiendum*. Which shewes what power the representative body hath, they have not power to give an oath; neither do they claime it.

The King at all times, when there is no parliament, & in Parliament is assisted with the advice of the Judges of the Lawe, 12 in number; for England at least hath 2 Sergeants when fewest: an Attorney and Solicitor, twelve Masters of the Chancery, his Councell of State, consisting of some great Prelates and other great Personages, versed in State affaires, when they are fewest to the number of twelve. All these persons are alwaies of great substance, which is not preserved but by the keeping of the Lawe, The Prelates versed in divine Lawe, the other Grandees in affaires of State & managery of Government, The Judges, Kings Sergeants, Attorney, Sollicitor, and Masters of the Chancery versed in the Lawe and Customes of the Realme: All

The Oath of the Just. ces 18 of E. 3. among Statutes of that yere.

sworn to serve the King and his people justly & truly, the King is also sworn to observe the Laws, and the Judges have in their Oath a clause, That they shall do common right to the Kings people, according to the established Laws, notwithstanding any command of the King to the contrary, under the Great Seale or otherwise, The people are safe by the Lawes in force without any new : The Law finding the Kings of this Realme assisted with so many great men of Conscience, Honour and skill in the rule of Common-wealth, knowledge of the Lawes, and bound by the high and holy bond of an Oath upon the Evangelists, settles among other powers upon the King, a power to refuse any Bill agreed upon by both Houses, and power to pardon all offences, to passe any Graunts in his Minority, (there are many great persons living hold many a thousand pound a yeare by Patents from *Edward* the sixt, passed when he was but ten yeares of age) not to be bound to any Law to his prejudice, whereby he doth not binde himselfe; power of warre and peace, coyning of Money, making all Officers, &c. The Lawe, for the reasons aforesaid, hath approved these powers to be unquestionable in the King, and all Kings have enjoyed them till 3. *Nov.* 1640.

It will bee said notwithstanding all this fence about the Lawes, the Lawes have beene violated, and therefore the said powers must not hold, the two Houses will remedy this.

The answer to this is evident : There is no time past, nor time present, nor will there bee time to come, so long as men manage the Lawe, but the Lawes will be broken more or lesse, as appears by the story of every age. All the pretended violations of this time were remedied by Acts to which the King consented before his departure 10. *Jan.* 1641. being then driven away by Tumults. And the Houses for a yeere and almost three Moneths : From 3. *Nov.* 1640 to 10 *Jan.* 1641. as aforesaid, being a yeare and almost three moneths, had time and liberty to question all those persons who were eyther causes or instruments of the violation of any of the Lawes.

Examine how both Houses remedied them in former times. First, touching Religion, What hath beene done this way ? Both houses in *Henry* the eight time tendred to him a Bill to
bee

bee passed called commonly the Bill of the six Articles, this was conceivd by them to be a just and a necessary Bill : Had not *Henry* the eighth done well to have refused the passing of this bill? both houses tendred a bill to him to take the reading of the Scriptures from most of the laity : had not King *Henry* the eight deserved much prayse to reject this bill? In *Queene Maryes* time both houses exhibited a bill to her to introduce the Popes power and the Roman Religion; had not *Queen Mary* done well to have refused this bill? Many such instances may be given. The two Houses now at Westminster I am sure will not deny but the refusall of such Bills had beene just, the King being assisted as aforesaid, and why not so in these times?

For the Civill Government what a bill did both houses present to *Richard* the third, to make good his title to the Crowne; had it not beene great honour to him to have rejected it? what bills were exhibited to *Henry* the eight by both houses for bastardizing of his daughter *Elizabeth*, a *Queene* of renowned memory, to settle the Crowne of this Relme, for default of Issue of his body, upon such persons as he should declare by his letters Patents or his last will, and many more of the like? had not this refusall of passing such bills magnified his vertue and rendred him to posterity in a different Character from what he now hath?

And by the experience of all times and the consideration of human frailty this conclusion is manifestly deduced, that it is not possible to keepe men at all times (be they the houses, or the King and his councill) but there will be sometimes some deviation from the Lawes, and therefore the constant and certain powers fixed by the ancient Law must not be made void, and the Kings Ministers; the Laws do punish where the Law is transgressed, and they only ought to suffer for the same.

In

In this Parliament the houses exhibited a bill to take away the suffrages of Bishops in the upper house of Parliament, and have since agreed there shall be no more Bishops at all, might not the King if he had so pleased have answered this bill with *Le Roy s'avisera*, or *ne veut*. it was against *Magna Charta*; *Articuli Cleri* and many other acts of Parliament. And might have farther given these reasons if it had so pleased him for the same : first that this Bill destroyes the writt whereby they are made two houses of Parliament the King in the writt to the Lords being *Cum prelati colloquium habere*; secondly they have beene in all Parliaments since we had any, and voted, but in such wherein they themselves were concerned : And there have beene Bishops here since we were Christians, and the fundamentall Law of the Kingdome approves of them : if any of them were conceived offensive; they were left to justice, and his Majestie would put in inoffensive men in their places : but since his Majestie hath passed the Bill for taking away their votes in Parliament, it is a Law that binds us so farr.

Upon the whole matter the Law hath notably determined that Bills agreed by both houses, pretended to be for the publique good, are to be judged by the King, for in all Kings reigns Bills have been preferred by both houses, which allwayes are pretended to be for the publique good, and many times are not, and were rejected with *Roy s'avisera* or *Roy ne veut*.

This Parliament beganne the third of November 1640 before that time in all the Kings reigne no armed power did force any of the people to do any thing against the law : what was done, was by his Judges, officers Referees and Ministers from that time untill the tenth of January 1641 (when the King went from London to avoyde the danger of frequent tumults, being a yeare and three months, Privy Councillors and all his Justices and Ministers.

ministers were left to the Justice of the law, there wanted no time to punish punishable men.

The Sphere of the house of Commons is to represent the grievances of the Countrey, to grant aydes for the King upon all fit occasions extraordinary, to assent to the making or abrogating of lawes : The Orb of the house of Lords to Reforme eroneous judgements given in the Kings Bench, to redresse the delayes of Courts of Justice, to receive all Petitions, to advise his Majestie with their Councell, to have their votes in making or abrogating of Lawes, and to propose for the common good, what they conceive meete,

Lex non cogit ad impossibilia, Subjects are not to expect from Kings impossible things, so many Judges, Councillours, Sheriffes, Justices of the peace, Commissioners, Ministers of State, that the King should over-looke them all cannot be, it is impossible.

- The King is virtually in his ordinary Courts of Justice; so long as they continue his Courts : their charge is to administer the lawes in being, and not to delay, deferre or sell justice for any commandement of the King. We have Lawes enough *instrumenta boni seculi sunt boni viri*, good ministers, as Judges and officers are many times wanting, the houses propose new Lawes, or abrogation of the old; both induce novelty : the law for the reasons aforesaid, makes the King the only Judge, who is assisted therein by a great number of grave, learned, and prudent men, as aforesaid.

For the considerations aforesaid the Kings party adhered to him, the law of the Land is their birth-right, their guide, no offence is committed where that is not violated : they found the commission of Array warranted by the law; they found the King in this Parliament to have quitted the Ship-money, Knight-hood-money, seven Courts of Justice, consented to a trienniall Parliament, settled the Forest bounds, tooke away the Clerke of the Marker of the household, trusted the house with the Navie, passed an Act not to dissolve this Parliament without the Houses assent; no people in the world so free if they could have been

content with Lawes, oathes and reason, and nothing more could or can be devised to secure us, neither hath been in any time.

Notwithstanding all this we found the King driven from *London* by frequent tumults, that two thirds and more of the Lords had deserted that house, for the same cause, and the greater part of the house of Commons left that house also for the same reason: new men chosen in their places, against Law, by the pretended Warrant of a counterfet Scale; and in the Kings name against his consent, levying warre against him, and seizing his Ports, Forts, Magazines and Revenue, and converting them to his destruction, and the subversion of the Law and Land, laying taxes on the people, never heard of before in this Land; devised new oathes to oppose forces rayfed by the King, not to adhere to him, but to them in this Warre which they call the Negative Oath, and the Vow and Covenant.

By severall wayes never used in this Kingdome they have raised monies to foment this warre, and especially to enrich some among them; namely first Excise, secondly Contributions, thirdly Sequestrations, fourthly Fift parts, fifthly Twentieth Parts, sixthly Meale-money, seventhly Sale of Plundered goods, eighthly Loanes, ninthly Benevolences, tenthly, Collections upon their Fast-dayes, eleventhly new Impositions upon Merchandizes, twelvethly Guards maintained upon the charge of private men, thirteenthly Fifty Subsidies at one time, fourteenthly Compositions with such as they call Delinquents, fifteenthly Sale of Bishops lands, &c.

1 R. 3. cap. 3.
Braft. li. 3. c. 8.
Stanford. 192.
Sir Ger. Fleet-
woods Case. 8.
pars Cook 7. H.
4. last leafe.

From the Kings party meanes of subsistence are taken; before any indictment, their Lands seized, their goods taken, the Law allows a Traytor or Fellon attainted, *Necessaria sibi & familie sue in vidu & vestitu*, where is the Covenant? where is the Petition of right? where is the liberty of the subject?

First, We have ayded the King in this warre contrary to the negative oath and other votes. Our warrant is the twenty fifth of *Edward* the third, the second Chapter, and the said resolutions of all the Judges.

Secondly,

Secondly, Wee have maintained the Commission of Array by the Kings Command, contrary to their votes: We are warranted by the statute of the fifth of *Henry* the fourth, and the judgement of *Sir Edward Cooke*, the Oracle of the Law as they call him.

Thirdly, We maintained Arch-Bishops and Bishops, whom they would suppress. Our warrant is *Magna Charta*, and many statutes more.

Fourthly, we have maintained the booke of Common prayer, they suppress it, Our warrant is five acts of Parliament in *Edward* the sixth and *Queene Elizabeths* time, 5. *Pesche*. 35. *Elizabeth inter placita Corona in Banco Regis*, New booke of Entries, fol. 252. *Perry*, for publishing two scandalous Libels against the Church government, was indicted, arraigned, attainted, and executed at Tyburne.

Fifthly, We maintained the Militia of the Kingdome to belong to the King, they the contrary, Our warrant is the statute of the seventh of *Edward* the first, and many statutes since, the practise of all times, and the custome of the Realm.

Sixthly, We maintained the counterfeiting of the great Seale to be high Treason, and so of the usurpation of the Kings Forts, Ports, Shipping, Castles and his Revenue, and the Coyning of money, against them; We have our warrant by the said statute of the twenty fifth of *Edward* the third, Chapter the second, and divers others since, and the practise of all times.

Seventhly, We maintaine that the King is the only supreme governour in all causes. They, that his Majesty is to be governed by them, Our warrant is the statutes of the first of *Q. Eliza*. Chapter the first, and the fifth of *Q. Elizabeth* the first.

Eighthly, Wee maintaine that the King is King by an inherent birth-right, by nature, by Gods law, and by the law of the Land, They say his Kingly right is an office upon trust, Our warrant is the statute of the first of King *James* Chapter the first. And the resolution of all the Judges of *England* in *Cabots* case. 9. *Ed. 4. fol. 4.*

Ninthly We maintain that the politick capacity is not to be severed from the naturall. They hold the contrary: Our warrant is two statutes (*viz.*) *exilium Hugonis* in *Edward* the seconds time, and the first of *Edward* the third, Chapter the second, and their Oracle who hath published it to posterity, that it is damnable, detestable and execrable Treason, *Calvins case pars 7. fol. 11.*

Tenthly we maintain that who aids the King at home or abroad ought not to be molested or questioned for the same, they hold and practise the contrary, our warrant is the statute of the eleventh of *Henry* the seventh, Chapter the first.

Eleventhly We maintain that the King hath power to disassent to any Bill agreed by the two Houses; which they deny. Our warrant is the Statute of the second of *Henry* the fifth, and the practise of all times, the first of King *Charles*, Chapter the seventh the first of King *James* Chapter the first.

Twelfthly We maintain that Parliaments ought to be holden in a grave and peaceable manner, without tumults, They allowed multitudes of the meanest sort of people to come to *Westminster* to cry for Justice when they could not have their will, and keep guards of armed men to wait upon them. Our warrant is the Statute of the seventh of *Edward* the second and their Oracle.

Coll. of Ord.
fol. 31.

Thirteenthly We maintain that there is no state within this Kingdome but the Kings Majesty, and that to adhere to any other State within this Kingdome is high treason, our warrant is the Statute of the third of King *James* Chapter the fourth, and the twenty third of *Queen Elizabeth* Chapter the first.

Fourteenthly, We maintain that to levy a warre to remove Councillours, to alter religion, or any Law established is high Treason, They hold the contrary, Our warrant is the resolutions of all the judges of *England* in *Queen Elisabeths* time, and their oracle agrees with the same.

Fifteenthly We maintain that no man should be imprisoned, put out of his Lands, but by due course of Law, and that no man ought to be adjudged to death but by the Law established, the

the customes of the Realm, or by act of Parliament; They praise the contrary in *London, Bristol, Kent, &c.* Our warrant is *Magna Charta*, Chapter the twenty ninth, the *Petition of right* the third of King *Charles*, and divers Lawes there mentioned.

We of the Kings party, did and do detest Monopolies, and ship money, and all the grievances of the people as much as any men living, we do well know that our estates, lives and fortunes are preserved by the Lawes, and that the King is bound by his lawes, we love Parliaments, if the Kings, Judges, Counsellor Ministers have done amisse, they had from the third of *November 1640* to the tenth of *January 1641* time to punish them, being all left to Justice where is the Kings fault?

The law saith the King can do no wrong, that he is *medicus Regni, pater patrie sponsus regni qui per anulum* is espoused to his Realm at his Coronation; The King is Gods Lieutenant, and is not able to do an unjust thing, these are the words of the Law. II pars Cooks Reports Magdalen Colledge Cale.

One great matter is pretended that the people are not sure to enjoy the acts passed this Parliament, A succeeding Parliament may repeal them; The objection is very weak, a Parliament succeeding to that may repeal that repealing Parliament. That feare is endlesse and remedlesse, for it is the essence of Parliaments being compleat and as they ought to be, of head, and all the Members, to have power over Parliaments before; Parliaments are as the time are; if a turbulent faction prevails the Parliaments are wicked as appears by the examples recited before of extreme wicked Parliaments: if the times be sober and modest, prudent and not biassed, the Parliaments are right good, and honourable, and they are good medicines and salves, but in this Parliament *excessit medicina modum*.

In this cause and warre between the Kings Majesty, and the two Houses at *Westminster*, what guide had the Subjects of the Land to direct them but the lawes? What means could they use to discern what to follow, what to avoid but the Lawes? The King declares it treason to adhere to the Houses in this

warre: The Houses declare it Treason to adhere to the King in this Warre. The Subjects for a great and considerable part of them (treason being such a crime as forfeits life and estate, also renders a mans posterity base beggerly and infamous) looke upon the Lawes, and find the letter of the law requires them to assist the King, as before is manifested, was ever subject criminally punished in any age or nation for his pursuit of what the letter of the Law commands?

The Subjects of the kingdome find the distinction and interpretation now put upon the Lawes of *Abstraction & Concreteness*, Power and Person, body politique, and naturall, Personall presence and virtuell, to have beene condemned by the law: And so the Kings party hath both the letter of the law and the interpretation of the letter cleared to their judgements, whereby they might evidently perceive what side to adhere to, what satisfaction could modest peaceable and loyall men more desire?

Call of Ordinances 777.

§ Eliz. cap. 1.

1 Eliz. cap. 1.

A verbo legis in criminibus & pœnis non est recedendum, hath been an approved maxime of law in all ages and times. If the King be King and remain in his Kingly office (as they call it) then all the said lawes are against them without colour: they say the said lawes relate to him in his Office, they cannot say otherwise, Commissions and pardon in the Kings name, and the person of the King and his body politique cannot. nor ought to be severed as hath beene before declared: And the members of both houses have sworn constantly in this Parliament that the King is the only supreme Governour in all causes over all persons at this present time.

For that of verball or personall commands of the King which is objected, We affirme few things to be subject thereto by the law: But his Majesties Command under his great Scale, which in this warre hath beene used by the Kings command for his Commission to levy and array men, that is no personall command (which the law in some cases disallowes) but that is such a command, so made, as all men hold their lands by, who hold by Patents; All corporations have their Charters which hold
by

by Charters, and all Judges and officers their places and callings.

It is objected the King cannot suppress his Courts of Justice, and that this warre tended to their suppression.

The answer is the King cannot nor ought to suppress Justice or his Courts of Justice, nor ever did: But Courts of Justice by *abuser or non user* cease to be courts of Justice; when Judges are made and proceedings in those courts holden by others then Judges made by the King, and against his command under the great Seale, and his Majestie is not obeyed, but the votes of the houses, they cease to be the Kings Courts and are become the Courts of the houses, and his Judges breaking that condition in law, of trust and loyalty, implied in their Patents, are no longer his Judges; they obey and exercise their places by vertue of writts and processes under a counterfeit Seale: The King only can make Judges, the twenty seventh of *Henry* the eighth, Chapter the twenty fourth, *Iustices of the peace*, &c. twenty eighth of *Henry* the eighth *Dier* the eleventh, the Kings Patent makes Judges: The cheefe Justice of the Kings Bench is made by the Kings writ only of all the judges.

The great Seale is the key of the kingdome, and meet it is that the King should have the key of his kingdome about him; 2. pars *instet* 552. which confutes their saying that the King got the Seale away surreptitiously.

The King, and he only, may remove his Courts from Westminster into some other place, at Yorke the Termes were kept for seaven yeares, in *Edward* the first's time: but for the Court of Common pleas, the place must be certaine; for the Kings Bench and Chancery, the King by the law may command them to attend his person alwayes if it seeme so meete unto him: but the removing of the Common pleas must be to a place certaine and so notified to the people.

All the bookes of law in all times agree, that the King may grant conuifance of all Pleas at his pleasure within any Country or precinct to be holden there only, and remove the Courts from Westminster

Ob.

Sol.

7 pars

The Earle of Westmerlands Case.

1 Eliz.

Dier.

165.

7. pars

Cooke.

The case of
discontinuance
of Procelle.

*Articuli super
chartas cap. 5.*

Britton fol. 23.

34. *Affis. pl. 24.*

22. *Ed. 4. Fitz.*

jurisdiction last

placit.

6 H.7.9.
6 Eliz.
226.

Dier.

Westminster to some other place (for the Common Pleas, the place must be certaine, and so notified to the people) and adjourne the termes as he sees cause. All which the two houses have violated. *Plebs sine lege ruit.*

Some seeming objections of Master *Prinn's*, scattered in divers books answered, and the truth thereby more fully cleared.

1 Ob.

The first of *Henry* the fourth reviveth the statute of the eleventh of *Richard* second, and repeales to the twelfth of *Richard* the second, whereby certaine persons were declared traytors to the King and Kingdome, being of the Kings party.

Sol.

True, but note, the eleventh of *Richard* the second; A Parliament beset with 40000 men, and the King assents to it, so an Act, and besides the first of *Henry* the fourth declares, that the treasons mentioned in the act of the eleventh of *Richard* the second, being but against a few private men shall not be drawn into example, and that no Treason should be but such as the twenty fift of *Edward* the third declares. All these are Acts passed by the King and the three estates, not to be drawne into example in a tumultuous time, by a besieged Parliament, with an army, and the confirmer of *Henry* the fourth being an usurper makes that Act of the first of *Henry* the fourth to secure himselfe. Also what is this in the votes of the two houses only at this time.

9 Ed.4.fol.80.

2 Ob.

The Court of Parliament is above the King, for it may avoid his Charters Commissions, &c. granted against the law.

Sol.

And the Law is above the King.

By the same reason you may say that the Courts of Chancery, or any of the Courts of Law at *Westminster* are above the King, for they make of no effect the Kings Charters, which are passed against the Law: and the King is Subject to Law, and sworne to maintaine it. Again, it is no Parliament without the King, and the King is the head thereof, he is *principium Caput & finis* of a Parliament, as *Medas tenendi Parliament*, hath it, and two houses only, want *principium Caput & finis* of a Parliament, and

and it is a sorry Parliament that wants all these. And therefore to say that Parliaments are above the King, is to say that the King is above himselfe.

The Parliament can enlarge the Kings prerogative, therefore it is above him.

3 Ob.

If the King assent, otherwise not; and then it is an Act of Parliament, and otherwise no Act.

Sol.

Bracton saith, God, the Law, and the Kings Court, (*viz.*) his Earles and Barons are above the King, (*viz.*) in Parliament, as Master *Prynne* expounds it.

4 Ob.

Where is then the House of Commons? Indeed, take God, the Law, and Earles and Barons together, it is true; but to affirme that the Earles and Barons in Parliament are above the King (the King being the head of the Parliament, and they one of the members) how an inferior member is above the head, is hard to conceive: besides, that position destroyes all *M. Prynne's* discourse, who attributes so much to the House of Commons.

Sol.

The King is but one of the three estates of Parliament, and two are greater then one; therefore above.

5 Ob.

The Legs, Armes, and Trunke of the Body are greater then the Head, and yet not above; nor with life, without it: the argument holds for quantitie, but not for qualitie; and in truth, the King is none of the three estates, but above them all; the three estates are, the Lords Spirituall; the Lords Temporall, and the Commons; *Coke*, their Oracle, in his Chapter of Parliaments, fol. 1.

Sol.

In Corporations, the greater number of voyces make all the Acts of the Corporation valid; therefore so in Parliament.

6 Ob.

By this reason the Kings assent is needlesse, and to no end, and all the Acts of Parliament formerly mentioned, and Law-Bookes have quite mistaken the matter, which with unanimous voyce requires the Kings assent as necessarie: besides, the Corporations are so constituted by the Kings Charters, that the greater number of Votes shall make their Acts valid.

Sol.

The King, as King, is present in his Parliament as well as in all other his Courts of Justice, howbeit he is not there.

7 Ob.

In his other Courts of Justice he hath no voyce, he is none

Sol.

of the Judges, in the Parliament he hath, if his presence be not necessarie, his voyce is not, nor his assent.

8 Ob.
Soverain
power of
Parlia-
ments, 46,

The originall prime legislative power of making Lawes, to bind the subjects and their posteritie, rests not in the King, but in the Kingdome and Parliament, which represents it.

47.

Sol.

Master *Prynne* in the same lease affirmes, and truly, that the Kings assent is generally requisite to passe Lawes and ratifie them; the King is the head of the Kingdome and Parliament, how then can a Body act without a Head?

9 Ob.

A *major* part of a Corporation binds, therefore the *major* part in Parliament, and so of by-Lawes.

Sol.

The Corporation is so bound, either by the Kings Charters, or by prescription, which sometimes had the Kings concession; but prescription, and Law, and practise, alwayes left the King a negative voyce.

10 Ob.

The King cannot alter the Bills presented to him by both Houses, 8^o.

Sol.

True; but the King may refuse them.

11 Ob.

Acts of Parliament and Lawes ministred in the Reignes of Usurpers, bind rightfull Kings, 8^o.

Sol.

What is this to prove the two Houses power only, which is the question? A King *de facto* must be obeyed by them who submitted to him, and they are his Subjects by their submission, and not Subjects *de facto* to the true King, and such being Traytors and Rebels to the Regent King (having renounced the true King) when the lawfull King is restored, may be punished by him for their Treason against the Usurper. But here is a King still in both cases, and the proceedings at Law holds; the Judges having their Patents from the being Kings, in the reignes of Kings, *de facto* or *de jure*, for all Kings are bound and sworne to observe the Lawes.

9. Ed. 4. 12

12 Ob.

A King dies without Heire, is an infant, *non compos mentis*, &c. the two Houses may establish Lawes, 8^o.

Sol.

There is no *Inter-regnum* in England, as appeares by all our Bookes of Law; and therefore the dying without Heire is a vaine supposition, and by their principle he is considerable in his politique capacitie, which cannot die at all: The Protector, assisted.

assisted by the Councell of the King at Law, his twelve Judges, the Councell of State, his Attorney, Solicitor, and two Sergeants at Law, his twelve Masters of the Chancerie, hath in the Kings behalfe, and ever had, a negative Voyce: but what is this to the present question? Wee have a King of full age, of great wisdom and judgement; the power of the two Houses in such a case to be over the King, cannot be shewne.

The King cannot dis-assent to publique and necessarie Bills for the common good, g^o. 13 Ob.

Nor ever did good King: but who shall be judge, whether they be publique and necessarie? The *major* part in either of the Houses, for passing of Bills so pretended, may be but one or two voyces, or very few, and perhaps of no judicious men: is it not then fitter or more agreeable to reason, that his Majesty and Councell of State, his twelve Judges, his Sergeants, Attorney and Solicitor, twelve Masters of the Chancerie, should judge of the conveniencie and benefit of such Bills for the publique good, rather than a *minor*, (of which sort there may be in the Houses) or a weake man, or a few, who oftentimes carry it by making the *major* part, which involves the consent of all? let reason determine. Sol.

The Kings of England have beene elective; and the King by his Coronation-Oath is bound to maintaine *justas leges & consuetudines quas vulgas elegerit*, g^o. 14 Ob.

Poperie hath beene in the kingdome, and therefore to continue it still, will not be taken for a good argument; when things are settled for many ages, to look back to times of confusion is to destroy all repose: The Act of Parliament, of the first of K. James, Chapter the first, and all our extant Lawes say, that the Kings Office is an heritage inherent in the bloud of our Kings, and their birth-right. Sol.

And Usurpers that come in by the consent of the people, are Kings *de facto*, but not *de jure*, as appeares by the Acts of Parliament declaring them so: And by all our Law-Bookes and the fundamentall constitution of the Land, Regall power is hereditarie and not elective. Ed. 4. c. 1.

For the words (*vulgas elegerit*) if *vulgas* be applyed to the House 1 H. 7.

House of Commons, they of themselves can make no Lawes. The Peeres were never yet tearmed *vulgus*; but allowing they be so called, the Lawes to be made must be just; and who is fit to judge thereof, is before made evident.

25 Ob. Customes cannot referre to future time, and both are coupled, Lawes and Customes.

Princes have beene deposed, and may be by the two Houses, g^o.

Sol. The depowers were Traytors, as appears by the resolution of all the Judges of *England*; Coke, Chap. Treason, in the second part of the Institutes. And never was King deposed but in tumultuous and mad times, and by the power of Armies, and they who were to be the succeeding Kings in the head of them, as *Edward* the third and *Henry* the fourth.

26 Ob. The appeale to the Parliament for errors in judgements in all Courts, is frequent, g^o.

Sol. This is onely to the House of Lords, and that is not the Parliament; the House of Commons have nothing to doe therewith: and in the House of Peeres, if a Writ of Error be brought to reverse any judgement, there is first a petition to the King for the allowance thereof; and the reason of the Law in this case is, for that the Judges of the Land all of them, the Kings Councell, and twelve Masters of the Chancerie assist there, by whose advice erroneous judgements are redressed.

27 Ob. The Parliaments have determined of the rights of Kings, as in *Henry* the sixts time, and others; and Parliaments have bound the succession of Kings, as appears by the Statute of the thirteenth of *Q. Elizab.* Chapter the first: and the discent of the Crowne is guided rather by a Parliamentarie Title then by Common Law, g^o.

Sol. If this Objection be true, that the Title to the Crowne is by Parliament, then we had no Usurpers, for they all had Parliaments to back them, yea, *Richard* the third, that Monster. All our Bookes of Law say they have the Crowne by discent, and the Statutes of the Land declare, that they have the same by inherent birth right. And the Statute of the thirteenth of *Elizabeth*, the first Chapter, was made to secure *Q. Elizabeth* against

again^t the Qu. of *Scots*, then in the kingdome, clayming the Crown of *England*, and having many adherents. And that Statute to that end affirmes no such power in the two Houses (which is the Question) but in Q. *Elizabeth*, and the two Houses, which makes against the pretence of this time.

Master *Prynne*, fol. 104. of his booke, intituled, *The Parliaments supreme power, &c.* Objecting the Statute of the first of Queen *Elizabeth*, and his own Oath, that the king is the onely supreme Governour of this Realme; Answers, The Parliament is the supreme power, and the king supreme Governour: And yet there he allowes him a Negative Voyce; and fol. 107. confesseth that Acts of Parliament translated the Crowne from the right Heires at Common-law, to others who had no good Title; then the Parliamentary Title makes not the king, so powerfull is truth, that it escapes from a man unawares: To make a distinction betweene Supreme Governour, and Supreme power, is very strange, for who can Govern without power?

The king assembles the Parliament by His Writ, adjourns, prorogues, and dissolves the Parliament, by the law at his pleasure, as is evident by constant practise, the House of Commons never sate after an adjournment of the Parliament by the kings command. Where is the supreme Power. Vide Speed
645.4 par.
Instit. 27.
&c.

The king by his Oath, is bound to deny no man right much lesse the Parliament, to agree to all just and necessary lawes proposed by them to the king. This is the substance of the discourse against the kings Negative Voyce. 19. Ob.

The king is so bound as is set downe in the Objection, but who shall judge whether the Bill proposed be just and necessary: For all that they doe propose are so pretended and carried in either House, sometimes by one or two Voyces; or some few as aforesaid, and certainly as hath been shewn, the king, his Councell of State, his Judges, Sargeants, Attorney, Sollicitor, and twelve Masters of the Chancery can better judge of them, then two or three, or few more. Sol.

Mr. *Pryn* fol. 45. In his booke of the Parliaments interest to nominate Privie-Councillors, calleth the opinion of the *Spencers*,

Calvins
case, 7.
pars, fol.
114

Spencers, to divide the Person of the King from his Crowne, a strange opinion, and cites *Calvins* Case, but leaves out the conclusions therein mentioned, fol. 11. Master *Prynne* saith there, But let this opinion bee what it will: without the Kings Grace and Pardon it will goe very far, and two Acts of Parliament there mentioned are beyond an opinion. And in his Book of the opening of the Great Seale, fol. 17. The Parliament hath no jurisdiction to use the Great Seale for Pardons Generall or Particular. Where is the Supreme power?

19. Ob. Mr. *Prynnes* (opening of the Seale) pag. 19. saith, The Noblemen and State, the day after the Funerall of King *Henry* the third (King *Edward* the first his sonne being in the Holy Land) made a new Great Seale, and Keepers of the same: And in *Henry* the sixts time, in the first yeere of his Reigne, the like was done in Parliament.

Sol. *A facto, ad jus*, is no good Argument, for that in *Edward* the firsts time, it was no Parliament, for King *Henry* the 3. was dead, which dissolved the Parliament, if called in his time, and it could be no Parliament of *Edward* the firsts time, for no Writ issued to summon a Parliament in his Name, nor could issue but under that New Seale, it was so sodainly done after *Henry* the thirds death, King *Edward* the first being then in the Holy Land, it was the first yeere of his Reigne, and no Parliament was held that yeere, nor the second yeere of his Reigne: The first Parliament that was in his Reigne, was in the third yeere of his Reigne, as appeares by the Printed Acts. Also the making of that Seale was by some Lords then present, What hand had the Commons in it? Concerning the Seale made in *Henry* the sixths time, the Protector was Vice-Roy according to the course of Law, and so the making of that Seal was by the Protector in the Kings name; and that Protector, *Humphrey* Duke of *Gloucester*, as Protector, in the kings Name summoned that Parliament, and was Protector made by the Lords, and not in Parliament, as appeareth p'ainely, for that Parliament was in the first of *Henry* the sixth, and the first holden in his time, and power given by Commission to the said Duke, then Protector,

rector, to summon that Parliament, *Prynne, ibid. fol. 19.* But the new counterfeit Seale was made when the King was at Oxford, in his own kingdome, and not in the holy Land.

Mr. *Prynne* in his Book of the two Houses power to impose Taxes, restraines Malignants against any *Habeas Corpus*, &c. saith, that the Parliament is above *Magna Charta*, and *fol. 15. ibid.* The Parliament hath power over *Magna Charta* to repeale the same when there is Cause.

20. Ob.

This Argument supposeth that they have the kings power, which hath appeared formerly they have not. But suppose they had, *Magna Charta* containes many morall Lawes, which by the Law of the Land a Parliament cannot alter, 21 H. 7. 2. D. & Student, 2. Dialogue. For example, it saith cap. 18. Justice shall not be sold, delayed, nor denyed to any man: but by this Argument the Parliament may make law to delay, deny, and to sell Justice, which surely is a very ill position to main-
taine.

Sol.

What they would have, doth now by the Propositions sent to *New-castle* to His Majesty appeare, whereby they would have him divest himselfe, and settle in them all his kingly power by Sea and land, and of themselves to have power, without him, to lay upon the people of this land what taxes they think meet, to abolish the Common-prayer-booke, to abolish Episcopacie, and to introduce a Church-Government not yet agreed, but such as they shall agree on.

His Majesty finding a prevailing party in both Houses to steere this course, and being chased away with Tumults from London, leaves the Houses for these Reasons, (*viz.*)

First, because to alter the Governement for Religion, is against the kings Oath.

Secondly, against their Oathes: For every of them hath sworne in this Parliament, That His Majesty is the onely supreme Governour in all Causes Ecclesiasticall and over all persons.

Thirdly, This course is against *Magna Charta*, the 1. chap. and the last. *Salva suis Episcopis omnes libertates sue*, Confirmed by thirty two Acts of Parliament; and in the two and fortieth

fortieth of *Edward* the third, in the first Chapter enacts, If any Statute be made to the contrary, it shall be holden for none, and so it is for Judgements at Law, in the 25. of *Edward* the 1. chap. 1, 2. The Great Charter is declared to bee the Common Law of the Land.

Fourthly, they endeavour to take away by their Propositions, the Government of Bishops, which is as ancient as Christianity in this Land, and the Book of Common-Prayer settled by five Acts of Parliament, and compiled by the Reformers and Martyrs, and practised in the time of foure Princes.

Fifthly, these Propositions taking away from His Majesty all his power by land and Sea, rob him of that which all his Ancestours, kings of this Realme, have enjoyed. That Enjoyment and Usage makes the Law; and a Right, by the same to His Majesty. They are against their owne Protestation made this Parliament, (*viz.*) to maintaine His Royall person, Honour, and Estate; They are against their Covenant, which doth say, that they will not diminish His Just Power and Greatnesse.

For these Reasons His Majesty hath left them, and as is beleaved, will refuse to agree to the said Propositions, as by the Fundamentall Law of the land hee may (having a Negative Voyce) to any Bills proposed.

The result of all is, upon the whole matter: That the king thus leaving of the Houses, and his Denyall to passe the said Propositions, are so farre from making him a Tyrant, or not in a condition to Gouverne, at the present; That thereby hee is rendred a Just, Magnanimous, and pious Prince: so that by this it appeares clearly to whom the Mileries of these Times are to be imputed. The remedy for all, is, an Act of Oblivion, and a Generall pardon.

God save the KING.

DAVID JENKINS, now Prisoner in the Tower.

28. Aprilis, 1647.